

The Days of Our District Court Lives

The Days of Our District Court Lives

Excluding intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days but otherwise we count every day

Why?

- Fed. Rule Civ. P. 6(a) & Fed. Rule Crim. P. 45(a)

Less than 11 days, exclude intermediate Saturdays, Sundays and legal holidays in counting when something must be done

Is This a Problem?

- If a ten-day period and a fourteen-day period start on the same day, which one ends first under the rules?

It's Relative!

- Under Current Rules
 - 12 days usually last 12 days
 - 10 days NEVER last just 10 days
 - 10 days always last at least 14 days
 - 8 times a year 10 days can last 15 days
 - Once per year 10 days can last 16 days

Time Computation Project

“Days are Days”

- To simplify time computation provisions and to eliminate the inconsistencies found in the Appellate, Bankruptcy, Civil & Criminal Rules
- Public Comment through February 15, 2008
- Passed by JCUS September 2008
- Approved by Supreme Court March 26, 2009
- Promulgated December 1, 2009

Application?

- Apply to all pending actions unless infeasible or would work injustice
- If infeasible or unjust, apply the former rule

Rules Enabling Act, 28 U.S.C. § 2074

Intent

- New Time Computation Rules, so no <11 day distinction
- Amended Federal Rules to conform to current use (unless unjust/unfair)
- Supersede existing statutes and laws with the approval of Congress
- Adopt multiples of 7 as a deadline numbering convention for shorter periods
 - (e.g., 7, 14, 21 & 28)

Under New Rules 6(a) and 45(a) Effective 12/1/09

In computing time in any Civil or Criminal Rule, local rule or court order, or in any statute *that does not specify a method of computing time*

- *Exclude the day that triggers the period and*
- *Count every day thereafter, including intermediate Saturdays, Sundays, and legal holidays*

Now v. Then

- Cr. Rule 5.1(c)
 - Prelim w/i 10 or 20 days

- Cr. Rule 35(a)
 - 7 days to correct sentence

- Cr. Rule 5.1(c)
 - Prelim w/i 14 or 21 days

- Cr. Rule 35(a)
 - 14 days to correct sentence

Now v. Then

- | | |
|---|---|
| ■ Civ. Rule 12 | ■ Civ. Rule 12 |
| • <u>20</u> days to answer | • <u>21</u> days to answer |
| ■ Civ. Rule 23 | ■ Civ. Rule 23 |
| • <u>10</u> days to appeal class cert ruling | • <u>14</u> days to appeal class cert ruling |

Final Day on a Weekend or Holiday

The period continues to run until the
“next day that is not a Saturday,
Sunday or legal holiday”

“Next Day” Calculated by

- Continuing to Count forward-when period measured after an event
- Continuing to Count backward-when period measured before an event
 - e.g., 14 days before trial

Legal Holidays

- Rule is unchanged
 - Enumerated holidays in the rule

Or

- Days declared by President, Congress or, for forward-counted periods, the state in which the court sits



What About Hours?

Same basic concept applies:

Begin counting immediately
and

Count every hour thereafter, including
intermediate Saturdays, Sundays, and
legal holidays

Final Hour on a Weekend or Holiday

The period continues to run until the same time on the next
“day that is not a Saturday, Sunday or legal holiday”

Clerk's Office Inaccessible?

- Last Day of Filing:
 - Time extended to first accessible day that's not a weekend or legal holiday

Last Hour of Filing:

- Time extended to same time on first accessible day that's not a weekend or legal holiday

“Last Day” Ends

- Electronic Filing
 - for e-filing in district court, at midnight in court’s time zone
 - for e-filing in court of appeals, at midnight in time zone of circuit clerk’s principal office
- Other Filing-when clerk’s office is scheduled to close

Implications

- Courts will need to review their local rules and standing orders for compliance
- Conform any pending or new rules to the upcoming change
- Because the Federal Rules will trump. *See, Fed. R. Civ. P. 6(a), 83(a)(1) and Fed. R. Cr. P. 45(a), 57(a)(1)*

Implications

- Does not change judicial orders in orders that set a date certain

EXAMPLES OF POSSIBLE AMENDMENTS TO LOCAL RULES, ACCOUNTING FOR FEDERAL RULES TIME-COMPUTATION AMENDMENTS

District of Connecticut Local Rules

RULE 7 MOTION PROCEDURES

(b) Motions for Extensions of Time

3. All motions for extensions of time, whether for consideration by the Clerk or a Judge, shall include a statement of the moving counsel that (1) he or she has inquired of opposing counsel and there is agreement or objection to the motion, or that (2) despite diligent effort, he or she cannot ascertain opposing counsel's position. All such motions shall also indicate the number of motions for extension of time that have been filed by the moving party with respect to the same limitation. The motion may be granted ex parte notwithstanding a report of objection by opposing counsel. Opposing counsel may move within ~~5 days~~ 7 days of an order granting a motion for extension of time to have the Court set aside the order for good cause. Agreement of counsel as to any extension of time does not of itself extend any time limitation or provide good cause for failing to comply with a deadline established by the federal rules of civil procedure, these rules or the Court.

(c) Motions for Reconsideration

1. Motions for reconsideration shall be filed and served within ~~ten (10) days~~ fourteen (14) days of the filing of the decision or order from which such relief is sought, and shall be accompanied by a memorandum setting forth concisely the matters or controlling decisions which counsel believes the Court overlooked in the initial decision or order.

(d) Reply Briefs

Reply briefs are not required and the absence of a reply brief will not prejudice the moving party. Any reply brief must be filed within ~~10 days~~ 14 days of the filing of the responsive brief to which reply is being made, as computed under Fed. R. Civ. P. 6. A reply brief may not exceed 10 pages, must be strictly confined to a discussion of matters raised by the responsive brief and must contain references to the pages of the responsive brief to which reply is being made.

RULE 26

DUTY OF DISCLOSURE

(f) Parties' Planning Conference

Within thirty days after the appearance of any defendant, the attorneys of record and any unrepresented parties who have appeared in the case shall confer for the purposes described in Fed. R. Civ. P. 26(f). If a government entity or official is a defendant, the conference shall be held within thirty days after the appearance of any such defendant. The conference shall be initiated by the plaintiff and may be conducted by telephone. Within ~~ten days~~ fourteen days after the conference, the participants shall jointly complete and file a report in the form prescribed by Form 26(f), which appears in the Appendix to these Rules. A copy of the report shall be mailed to the chambers of the presiding Judge.

RULE 37

DISCOVERY DISPUTES

(d) Unless a different time is set by the Court, compliance with discovery ordered by the Court shall be made within ~~ten (10) days~~ fourteen (14) days of the filing of the Court's order.

RULE 41

DISMISSAL OF ACTIONS

(a) For Failure To Prosecute

In civil actions in which no action has been taken by the parties for six (6) months or in which deadlines established by the Court pursuant to Rule 16 appear not to have been met, the Clerk shall give notice of proposed dismissal to counsel of record and pro se parties, if any. If such notice has been given and no action has been taken in the action in the meantime and no satisfactory explanation is submitted to the Court within ~~twenty (20) days~~ twenty-one (21) days thereafter, the Clerk shall enter an order of dismissal. Any such order entered by the Clerk under this Rule may be suspended, altered, or rescinded by the Court for cause shown. (amended January 24, 2003, effective March 1, 2003).

RULE 53

SPECIAL MASTERS

iv. May Sit Outside District

A master may sit outside the District. Where he or she is requested to sit outside the District for the convenience of a party and there is opposition thereto by another party, the special master may make an order for the holding of the hearing, or a part thereof, outside the District, upon such terms and conditions as shall be just. Such order may be reviewed by the Court upon motion of any party, served within ~~fifteen (15) days~~ fourteen (14) days after notice to all parties of the making of the order.

vi. Confirmation or Rejection of Masters' Report

Any party objecting to the report of a master shall serve and file an objection, including the reasons therefore, within ~~fifteen (15) days~~ fourteen (14) days of the filing of the master's report. Opposing memoranda shall be served and filed within ~~fifteen (15) days~~ fourteen (14) days thereafter. The absence of a timely objection shall be sufficient grounds to confirm the master's report.

RULE 54

TAXATION OF COSTS

(a) Procedure for Taxing Costs

Any party who seeks costs in the District Court shall, within ~~ten (10) days~~ fourteen (14) days after the District Court judgment becomes final due to the expiration of the appeal period, as defined by Fed.R.App.P. Rule 4, or within ~~ten (10) days~~ fourteen (14) days after the issuance of a mandate by a federal appellate Court, file with the Clerk and serve on all other parties a verified bill of costs pursuant to 28 U.S.C. §§ 1821, 1920, 1923 and 1924, setting forth each item of costs that is claimed.

(b) Objections to the Bill of Costs

Any objections to the bill of costs shall be filed with the Clerk within ~~ten (10) days~~ fourteen (14) days of the filing of the bill of costs and shall specify each item to which there is an objection and the reasons for such objection. The Clerk shall rule on any objection to the bill of costs. In the absence of a timely objection, the Clerk shall award costs in accordance with the provisions of this Local Rule.

(d) Review of the Clerk's Ruling

Any party may, within ~~five (5) days~~ seven (7) days of the entry of the Clerk's ruling, apply to the Judge before whom the case was assigned for review of the Clerk's ruling on the bill of costs. Such application shall specify which portions of the Clerk's ruling are the subject of the objection and shall specify the reasons therefor. Any other party may respond to such objection within ~~five (5) days~~ seven (7) days of the filing of such objection.

LOCAL RULE 77.1

ENTRY OF ORDERS AND JUDGMENTS

(a) By the Court

A memorandum signed by the Judge or Magistrate of the decision of a motion that does not finally determine all claims for relief shall constitute the required order unless such memorandum directs the submission or settlement of an order in more extended form. The notation in the appropriate docket of an "order," as defined in the previous paragraph, shall constitute the entry of the order. Unless otherwise directed by the Court, proposed orders, judgments and decrees shall be presented to the Clerk's office, and not directly to the Judge. Unless the form of order, judgment, or decree is consented to in writing, or unless the Court otherwise directs, ~~five (5) days'~~ seven (7) days' notice of settlement is required. ~~Three (3) days'~~ Seven (7) days' (or, if maintaining three days' deadline is critical, Three days' notice, excluding intermediate weekends and holidays) notice is required on all counter proposals. Unless adopted by the Court, such proposed orders, judgments or decrees shall not form any part of the record of the action.

LOCAL RULE. 83.7

TRANSFER OF CASES TO ANOTHER DISTRICT OR UPON REMAND TO A STATE COURT

In a case ordered transferred to another District Court or remanded to the appropriate State Court, the clerk shall mail, on the ~~eleventh day~~ fourteenth day following the order of transfer or remand, to the Court to which the case is transferred or remanded: (1) a certified copy of the Court's opinion directing such action, and its order thereon, and of the docket entries, and (2) the original of all pleadings and other papers on file in the case, provided that no timely motion for reconsideration of the order of transfer or remand has been filed pursuant to Local Civil Rule 7(c). Where a timely motion for reconsideration has been filed, the Clerk shall delay mailing the file until the Court has ruled on the motion for reconsideration and will thereafter take such action as is consistent with the ruling on the motion for reconsideration.

LOCAL RULE 83.10
CIVIL PRO BONO PANEL

(b) Appointment Procedure

2. A written application for appointed counsel by the pro se party should be made to the assigned Judge within ~~ten (10) days~~ fourteen (14) days after the party files an in forma pauperis affidavit.